



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200717021

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Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend

Taxpayer A =

Taxpayer B =

Individual C =

Amount C =

IRA X =

IRA Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Company M =

Company N =

State W =

Court X =

Dear :

This is in response to your , letter, as supplemented by
letters dated and
in which you request a waiver of the 60-day rollover requirement
contained in section 408(d)(3)(A) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of
perjury in support of the ruling request:

Taxpayer A, whose date of birth was Date 1, 1932, died a resident of State W on
Date 4, 2004, having attained age 70 ½. Prior to his death, Taxpayer A had
owned two individual retirement arrangements ("IRAs"), IRA X and IRA Y,
described in section 408(a) of the Code, with Company M.

On Date 2, 2004, five (5) days prior to Taxpayer A's death, Taxpayer A decided
to withdraw Amount C from his IRAs X and Y. The surrender check was drawn
three days later on Date 3, 2004. The documentation submitted with respect to
this ruling request includes several affidavits signed by Individual C, an agent of
Company M, which provide, in relevant part, that Taxpayer A intended to
minimize his tax consequences at the time he withdrew Amount C from his IRAs
X and Y. The affidavits also provide that Individual C explained to Taxpayer A
that he could roll over the distributions received from his IRAs X and Y into one
or more IRAs within 60 days of receipt, and that if he did, he would defer taxation
on the distributions. The affidavits further provide that Taxpayer A indicated to
Individual C that he intended to roll over the distributions.

Taxpayer B is Taxpayer A's surviving spouse who, on or about Date 7, 2004,
was appointed the administratrix of the estate of Taxpayer A. On Date 5, 2004,
two (2) days after Taxpayer A's death, Taxpayer B received a check in the
amount of Amount C which represented the distributions from Taxpayer A's IRA
X and IRA Y. On or about Date 6, 2004, which was approximately 21 days after
Date 5, 2004, and within 60 days of Date 2, 2004, Taxpayer B established an
IRA in the name of Taxpayer A with Company N and deposited the check in the
amount of Amount C received from Company N into said IRA. Amount C,
adjusted for gains/losses, remains in the IRA created on or about Date 6, 2004.

The documentation supplementing this ruling request includes an order of Court X, asserted to be a court of competent jurisdiction, dated Date 8, 2004, which authorized Taxpayer B, as administratrix of Taxpayer A's estate, to contribute the amounts received from Taxpayer A's IRAs X and Y (Amount C) into an account with Company N.

Based on the facts and representations, you request that the Service treat Taxpayer B's Date 6, 2004 "rollover" of Amount C into an IRA created with Company N as a valid rollover within the meaning of section 408(d)(3)(A) of the Code.

With respect to your ruling request, Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

The documentation presented by Taxpayer B demonstrates that Taxpayer A did not either roll over the check dated Date 3, 2004 payable to Taxpayer A or execute the documents to create an IRA to accept said check because of his death on Date 4, 2004, two days after Date 3, 2004 and two days prior to Date 5, 2004, the date on which said check was received by Taxpayer B. Taxpayer B, Taxpayer A's spouse and the administratrix of his estate, did receive the IRA X and IRA Y distribution checks within 60 days of the date Taxpayer A advised Company M that he intended to withdraw said amount, and also contributed said check into an IRA with Company N within the same 60 day period.

Based on the above, and subject to the restrictions noted below, the Service hereby concludes that Taxpayer B's action, taken as surviving spouse and acting within the scope of her authority as administratrix of Taxpayer A's estate, a position to which she was appointed, whereby she contributed the check representing proceeds of IRAs X and Y into another IRA in the name of Taxpayer A within 60 days of the date Taxpayer A requested said proceeds, is deemed to have complied with the requirements of Code section 408(d)(3)(A), and is deemed to constitute a valid rollover contribution pursuant to said Code section.

This ruling does not authorize the rollover of amounts that either were or are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code).

In this case, Taxpayer B established an IRA in the name of Taxpayer A after the death of Taxpayer A. Irrespective of whether Taxpayer B named a beneficiary of said IRA, the IRA into which Amount C was rolled over does not have a designated beneficiary as that term is defined in Code section 401(a)(9). Thus, the Code section 401(a)(9) distribution period with respect to the rollover IRA referenced above is that applicable to an individual who died after having attained his required beginning date without having designated a beneficiary thereof.

The Service also notes that Taxpayer A had not named a beneficiary of the IRA created in his name posthumously on Date 6, 2004. Therefore, since Taxpayer B is not the named beneficiary of said IRA, pursuant to the guidelines of Code

section 408(d)(3) and the "Final" Regulations promulgated under section 1.408-8, she is not eligible to treat said IRA as her own.

Furthermore, this ruling letter assumes that Taxpayer B's action in contributing the above-referenced Amount C into an IRA set up in Taxpayer A's name with Company N was in accordance with the laws of State W and taken pursuant to the Court X court order as represented.

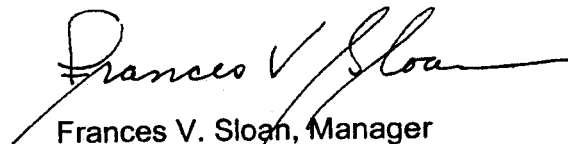
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact
Esquire (I.D. # -), at . Please address all correspondence
to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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Notice of Intention to Disclose, Notice 437